

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

DONALD R. FOSHEE, et al.,

Plaintiffs,

vs.

No. 06-2619-B

FOREST HILL FUNERAL HOME and
MEMORIAL PARK-EAST, LLC, et al.,

Defendants.

**ORDER DENYING DEFENDANT'S MOTION TO ACCEPT TRANSFER,
ADOPTING THE REPORT AND RECOMMENDATION OF THE CLERK
AND ORDER OF TRANSFER**

Before the Court is a motion of the Defendant, Community Trust and Investment Company, Inc. to accept the transfer by the undersigned of two other cases as companion cases to the instant case. The companion cases are Civil Action Nos. 06-2612 and 06-2617. Because the cases are similar in nature and all parties agreed to the transfer, this Court referred the matter to the Clerk under Local Rule 83.3(a)(3) which directs the Clerk to examine the complaint and determine whether the other cases are companion to one already pending. If the cases are determined to be companion cases, then they are to be assigned to the judge "before whom the original companion action is pending without utilizing the random assigned system." See LR83.3(a)(3). This Court entered an order on November 1, 2006, holding the instant motion to transfer in abeyance until the Clerk made his report concerning the potential transfer of these cases to one judge.

On November 15, 2006, Thomas M. Gould, Clerk of Court, issued a report that Case Nos. 06-2617 and 06-2619 be transferred to Judge Jon McCalla inasmuch as his case, 06-2612, was the first filed in this district. Although the case assigned number 06-2619 was the first of the three cases to be filed in state court, it was the last to be actually filed as a removed case in this court. As a result, Mr. Gould recommended this Court follow the actual sequence of filing

in the District Court as opposed to where a case may have been first filed in another court. The Clerk distinguished cases cited by Community Trust as not applicable to the circumstance which is found in this case, that is that all three companion cases were filed in Federal Court and given case numbers and assigned to different judges. His conclusion was that the determination as to who the case should be transferred should be based upon the dates when each case entered the federal court docket, regardless of when a case was earlier filed in another jurisdiction, including state court. As a result of those findings, Mr. Gould recommended that the instant case, 06-2619, be transferred to District Judge Jon McCalla who was assigned the earliest filed case, 06-2612.¹

Since the report and recommendation was submitted by the Clerk, there have been no objections or appeal to this Court concerning his conclusions. Accordingly, upon review of the report and recommendation as well as case law cited by the parties, this Court is of the opinion that Local Rule 83.3(a)(3) dictates that this case should be transferred to Judge McCalla as a companion case inasmuch as the case assigned to him was the earliest filed related case.

Accordingly, the Defendant's motion to accept transfer is DENIED and the above-styled case is transferred to Judge Jon P. McCalla. The parties shall, on all pleadings and correspondence related to this matter, change the judge's initials in this case number from "B" to "M1."

IT IS SO ORDERED this 9th day of January, 2007.

s/ J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE

¹ On January 8, 2007, District Judge Samuel H. Mays transferred his case number 06-2617 to Judge McCalla, based upon the Clerk's determination as set forth herein.